



Virginia  
Regulatory  
Town Hall

Notice of Intended Regulatory Action  
Agency Background Document

<b>Agency Name:</b>	Board of Counseling, Dept. of Health Professions
<b>VAC Chapter Number:</b>	18 VAC 115-60-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners
<b>Action Title:</b>	Consistency Review
<b>Date:</b>	

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

Over the past five years, the Board has promulgated three new chapters for the licensure of marriage and family therapists and substance abuse treatment practitioners and the certification of rehabilitation providers. The Board has also completed extensive reviews of its long-existing regulations for professional counselor licensure and substance abuse counselor certification. Although the Board attempted to mirror established regulations in the development of the new regulations, the regulatory processes were progressing along different timelines, and improvements identified during one review might not meet the initial purpose of another review.

The Board is in the process of initiating periodic reviews for four chapters of its regulations. This chapter is new and will not be due for periodic review until 2002. However, the Board would like to take the opportunity to remedy inconsistencies in this chapter while reviewing the other chapters. This is especially important for the standards of practice, since the majority of individuals licensed under this chapter are also licensed

as professional counselors. A consistent basis for disciplinary action for all regulated titles is essential, because many licensees hold multiple licenses and certifications under the Board.

The Board has also been studying the need for additional training for supervisors of applicants preparing for licensure. The current regulations require that supervisors document didactic instruction in substance abuse and experience in supervision. A rule that will take effect in 2003 will require a course in supervision. The Board conducted a survey of recently licensed professional counselors to assess the adequacy of supervision and identify any specific problems that may point to the need for additional training for supervisors. Both residents and supervisors responding to the survey reported favorably regarding the adequacy of the supervised experience in preparation for licensure. However, the majority supervisors responding (77%) recommended that there should be a minimum number of years in practice prior to acting as a supervisor. Nearly half felt that didactic training in supervision and/or an active caseload while supervising were also important. The survey did not indicate a deficiency in supervisor training, as over 95% of those responding had independently sought training on their own. The Board would like to consider what requirements for supervisors should be included in the regulations.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

Section 54.1-2400 establishes duties of health regulatory boards to establish necessary qualifications for registration, certification or licensure, to ensure the competence and integrity of regulated practitioners, to examine applicants, to establish renewal schedules, to administer fees to cover the administrative expenses of the regulatory program, to take disciplinary action for violations of law and regulations and to establish requirements for an inactive licensure status.

#### **§ 54.1-2400. General powers and duties of health regulatory boards**

*The general powers and duties of health regulatory boards shall be:*

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*

3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.

4. To establish schedules for renewals of registration, certification and licensure.

5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.

7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.

8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.

9. To take appropriate disciplinary action for violations of applicable law and regulations.

10. To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.

11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.

12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.

§54.1-3500 establishes the title of *licensed substance abuse treatment practitioner* and sets for the scope of practice for the profession.

#### **§ 54.1-3500. Definitions**

As used in this chapter, unless the context requires a different meaning:

"Appraisal activities" means the exercise of professional judgment based on observations and objective assessments of a client's behavior to evaluate current functioning, diagnose, and select appropriate treatment required to remediate identified problems or to make appropriate referrals.

"Board" means the Board of Counseling.

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

*"Counseling" means the therapeutic process of: (i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives and (ii) planning, implementing, and evaluating treatment plans using treatment interventions to facilitate human development and to identify and remediate mental, emotional or behavioral disorders and associated distresses which interfere with mental health.*

*"Counseling treatment intervention" means those cognitive, affective, behavioral and systemic counseling strategies, techniques and methods common to the behavioral sciences that are specifically implemented in the context of a therapeutic relationship. Other treatment interventions include developmental counseling, guidance, and consulting to facilitate normal growth and development, including educational and career development.*

***"Licensed substance abuse treatment practitioner" means a person who: (i) is trained in and engages in the practice of substance abuse treatment with individuals or groups of individuals suffering from the effects of substance abuse or dependence, and in the prevention of substance abuse or dependence; and (ii) is licensed to provide advanced substance abuse treatment and independent, direct and unsupervised treatment to such individuals or groups of individuals, and to plan, evaluate, supervise, and direct substance abuse treatment provided by others.***

*"Marriage and family therapist" means a person trained in the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques.*

*"Marriage and family therapy" means the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques and delivery of services to individuals, couples, and families, singularly or in groups, for the purpose of treating such disorders.*

*"Practice of counseling" means rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, methods or procedures of the counseling profession, which shall include appraisal, counseling, and referral activities.*

*"Practice of marriage and family therapy" means the assessment and treatment of cognitive, affective, or behavioral mental and emotional disorders within the context of marriage and family systems through the application of therapeutic and family systems theories and techniques, which shall include assessment, treatment, and referral activities.*

***"Practice of substance abuse treatment" means rendering or offering to render substance abuse treatment to individuals, groups, organizations, or the general public.***

*"Professional counselor" means a person trained in counseling interventions designed to facilitate an individual's achievement of human development goals and remediating mental, emotional, or behavioral disorders and associated distresses which interfere with mental health and development.*

*"Referral activities" means the evaluation of data to identify problems and to determine advisability of referral to other specialists.*

***"Substance abuse" and "substance dependence" mean a maladaptive pattern of substance use leading to clinically significant impairment or distress.***

***"Substance abuse treatment" means (i) the application of specific knowledge, skills, substance abuse treatment theory and substance abuse treatment techniques to define goals and develop a treatment plan of action regarding substance abuse or dependence prevention, education or treatment in the substance abuse or dependence recovery process and (ii) referrals to medical, social services, psychological, psychiatric or legal resources when such referrals are indicated.***

§ 54.1-3503 establishes the Board of Counseling, and authorizes the Board to regulate the practice of substance abuse treatment.

**§ 54.1-3503. Board of Counseling.** *The Board of Counseling shall regulate the practice of counseling, substance abuse treatment, and marriage and family therapy.*

*The Board shall consist of fourteen members. Twelve shall be professionals licensed in Virginia, who shall represent the various specialties recognized in the profession, and two shall be citizen members. Of the twelve professional members, eight shall be professional counselors, two shall be marriage and family therapists, and two shall be licensed substance abuse treatment practitioners. The professional members of the Board shall include two full-time faculty members engaged in teaching counseling, substance abuse treatment or marriage and family therapy in an accredited college or university in this Commonwealth, and two professional counselors engaged in full-time private practice. However, the marriage and family therapists initially appointed to the Board shall not be required to be licensed, shall not be licensed by another board in the Department of Health Professions, and shall be clinical members of the American Association for Marriage and Family Therapy. The licensed substance abuse treatment practitioners initially appointed to the Board shall not be required to be licensed, shall not be licensed by another board in the Department of Health Professions, shall be active members of the Virginia Association of Alcoholism and Drug Abuse Counselors and shall have a master's degree in substance abuse or a substantially equivalent master's degree.*

*The terms of the members of the Board shall be four years*

§54.1-3505 authorizes the Board promulgate regulations for the practice of substance abuse treatment.

**§ 54.1-3505. Specific powers and duties of the Board.** *In addition to the powers granted in § 54.1-2400, the Board shall have the following specific powers and duties:*

*1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs.*

*2. To conduct inspections to ensure that licensees conduct their practices in a competent manner and in conformance with the relevant regulations.*

*3. To designate specialties within the profession.*

*4. To administer the certification of rehabilitation providers pursuant to Article 2 (§ 54.1-3510 et seq.) of this chapter, including prescribing fees for application processing, examinations, certification and certification renewal.*

*5. (Effective until July 1, 1999) To promulgate regulations for the voluntary certification of licensees as sex offender treatment providers. In promulgating such regulations, the Board shall consider the standards recommended by the Advisory Committee on Certified Practices pursuant to § 54.1-3610. The provisions of this subdivision shall expire on July 1, 1999.*

*6. To promulgate regulations for the qualifications, education, and experience for licensure of marriage and family therapists. The requirements for clinical membership in the American Association for Marriage and Family Therapy (AAMFT), and the professional examination service's national marriage and family therapy examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for marriage and family therapists shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for professional counselors.*

*7. To promulgate, subject to the requirements of Article 1.1 (§ 54.1-3507 et seq.) of this chapter, regulations for the qualifications, education, and experience for licensure of licensed substance abuse treatment practitioners. The requirements for membership in the National Association of Alcoholism and Drug Abuse Counselors and its national examination may be considered by the Board in the promulgation of these regulations. The educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed substance abuse treatment practitioners shall not be less than the educational credit hour, clinical experience hour, and clinical supervision hour requirements for licensed professional counselors.*

§54.1-3506 requires licensure for the independent practice of substance abuse treatment.

*§ 54.1-3506. License required. In order to engage in the practice of counseling or marriage and family therapy or in the independent practice of substance abuse treatment, as defined in this chapter, it shall be necessary to hold a license; however, no license shall be required for the practice of marriage and family therapy or the independent practice of substance abuse treatment until six months after the effective date of regulations governing marriage and family therapy and substance abuse treatment, respectively, promulgated by the Board under subdivisions 6 and 7 of § 54.1-3505. The Board may issue a license, without examination, for the practice of marriage and family therapy or the independent practice of substance abuse treatment to persons who hold a current and unrestricted license as a professional counselor within the Commonwealth and who meet the clinical and academic requirements for licensure as a marriage and family therapist or licensed substance abuse treatment practitioner, respectively. The applicant for such license shall present satisfactory evidence of qualifications equal to those required of applicants for licensure as marriage and family therapists or licensed substance abuse treatment practitioners, respectively, by examination in the Commonwealth.*

*Any person who renders substance abuse treatment services as defined in this chapter and who is not licensed to do so, other than a person who is exempt pursuant to § 54.1-3501, shall render such services only when he is (i) under the supervision and direction of a person licensed under this chapter who shall be responsible for the services performed by such unlicensed person, or (ii) in compliance with the regulations governing an organization or a facility licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.*

The web site address for located the text of these statutes is <http://www.leg1.state.va.us>.

## Substance

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

**18 VAC 115-60-10.** In accordance with changes recommended for other sections of the regulation, the Board would like to amend the definitions to include the acronym CACREP (Council for Accreditation of Counseling and Related Educational Programs) and strike the definition of “candidate for licensure.”

**18 VAC 115-60-40 and 18 VAC 115-60-50.** Minor changes will be recommended to conform the language in these sections with other chapters. No changes in requirements are recommended.

**18 VAC 115-60-60.** The Board would like to recognize degrees certified by the Council on Accreditation of Counseling and Related Education Programs (CACREP) as meeting the degree requirement, as it has in its regulations for other licensure titles.

**18 VAC 115-60-70.** Minor changes will be recommended to conform the language in these sections with other chapters. No changes in requirements are recommended.

**18 VAC 115-60-80.** The Board would like amend the names of the residency content areas to match corresponding content areas in its other chapters. Two new content areas “case management and recordkeeping” and “professional identity and function” would be proposed.

The Board would like to include a provision to allow doctoral degree candidates to begin the supervised experience after completion of 30 graduate hours, as it has for its other licensure titles.

The Board would also like to consider requirements for additional education or work experience for individuals who act as supervisors. If a course in supervision is selected as the best alternative, the regulation will not need to be amended, as this requirement exists in the current regulation. The Board noted that the regulation is lacking a requirement for verification of the supervisor’s education experience, which is requested on the application forms.

**18 VAC 115-60-90.** Minor changes will be recommended to conform the language in these sections with other chapters. No changes in requirements are recommended.

**18 VAC 115-60-110.** The Board would like to include a requirement for official documentation of legal name change.

**18 VAC 115-60-130.** The Board recommends amending the standards of practice to improve the consistency in the standards among all of its chapters. This will allow for more consistent disciplinary action for all licensees and allow the Board to take the same action for one individual holding multiple licenses.

**18 VAC 115-60-140.** Minor changes will be recommended to conform the language in these sections with other chapters

## Alternatives

*Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.*

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As alternatives, the Board considered all of its chapters governing licensed or certified practitioners and identified areas where consistency could be improved among its chapters. For the most part, the solutions already existed in other chapters and could be mirrored across all regulations. The Board was unable to easily resolve the issue of

supervisor training and conducted a survey to identify whether there is a perceived problem with the quality of supervision.

The Board has considered the following alternatives to improve the effectiveness of supervision for all of its licensure titles during the 4000-hour residency:

- Require a course in supervision
- Require continuing education for all supervisors
- Require five years post-degree work experience for individuals to serve as supervisors
- Require both post-degree experience and a graduate course in supervision
- Require both post-degree experience and continuing education
- Limit number of supervisees (rejected, increase difficulty to obtain supervision)

This chapter already includes the first alternative. The Board rejected the last alternative because it would increase the difficulty for trainees to obtain supervision. The Board's Supervision Committee will continue to consider the relevance and effectiveness of the other alternatives, and the potential impact on trainees.

### Family Impact Statement

*Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The proposed amendments will not have any significant effect on the ease or difficulty of obtaining a license or certificate, and will have no influence on the authority and rights of parents in the education, nurturing or supervision of their children, will not impact self-pride or self-sufficiency of licensees, and will not affect the marital commitment or family income.